

BEFORE THE BOARD OF OPTOMETRY
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the proposed) NOTICE OF PROPOSED
amendment of ARM 8.36.801,) AMENDMENT
pertaining to therapeutic)
pharmaceutical agents)

NO PUBLIC HEARING CONTEMPLATED

TO: All Concerned Persons

1. On May 13, 2002, the Board of Optometry proposes to amend the above-stated rule.

2. The Department of Labor and Industry will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Optometry no later than 5:00 p.m., April 29, 2002, to advise us of the nature of the accommodation that you need. Please contact Linda Grief, Board of Optometry, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2395; Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; e-mail complopt@state.mt.us.

3. The rule as proposed to be amended provides as follows: (stricken matter interlined, new matter underlined)

8.36.801 THERAPEUTIC PHARMACEUTICAL AGENTS (1) through (1)(b) remain the same.

(c) All licensed and therapeutically certified optometrists who issue prescriptions for controlled substances must obtain ~~and use~~ a DEA number and place the number on ~~all controlled substance prescriptions only~~.

AUTH: 37-1-131, 37-1-319, 37-10-202, MCA

IMP: ~~37-1-304,~~ 37-1-131, 37-10-103, MCA

REASON: The Board finds there is reasonable necessity to propose amendment to this rule. The American Optometric Association ("the AOA") recently suggested the board amend ARM 8.36.801(1)(c) because the AOA believes the rule may be contrary to what the federal Drug Enforcement Agency (DEA) requires for optometrists who prescribe controlled substances. After considering the suggestion, the board has verified the DEA's policy regarding use of the DEA number only on those prescriptions for what the DEA has classified as a "controlled substance". The Board finds there is reasonable necessity to amend this rule to be in compliance with DEA requirements, so that Montana optometrists may continue to serve their patients

by prescribing (when necessary and appropriate) those substances which are strictly regulated by federal law.

4. Concerned persons may submit their data, views or arguments concerning the proposed action in writing to the Board of Optometry, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or by e-mail to compolopt@state.mt.us. to be received no later than 5:00 p.m., April 29, 2002.

5. If persons who are directly affected by the proposed action wish to express their data, views or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit the request along with any comments they have to the Board of Optometry, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or by e-mail to compolopt@state.mt.us to be received no later than 5:00 p.m., April 29, 2002.

6. An electronic copy of this Notice of Proposed Amendment is available through the Department's and Board's site on the World Wide Web at http://www.discoveringmontana.com/dli/bsd/license/bsd_boards/opt_board/rules.htm. The Department strives to make the electronic copy of this Notice of Public Hearing conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered.

7. If the Board receives requests for a public hearing on the proposed action from either 10 percent or 25, whichever is less, of those persons who are directly affected by the proposed action, from the appropriate administrative rule review committee of the legislature, from a governmental agency or subdivision or from an association having no less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 27 based on the 267 licensed optometrists in Montana.

8. The Board of Optometry maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this Board. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding all Board of Optometry administrative rulemaking proceedings or other administrative proceedings. Such written request may be mailed or delivered to the Board of Optometry, 301 South Park Avenue, P.O. Box

200513, Helena, Montana 59620-0513, faxed to the office at (406) 841-2305, e-mailed to complopt@state.mt.us or may be made by completing a request form at any rules hearing held by the agency.

9. The Board of Optometry will meet on May 13, 2002, via a conference call at its offices at 301 South Park Avenue, Helena, Montana, at 10:00 a.m., to consider the comments made by the public, the proposed responses to those comments, and take final action on the proposed amendments. Members of the public are welcome to attend the conference call meeting and listen to the Board's deliberations, but the Board cannot accept any comments concerning the proposed amendment beyond the April 29, 2002, deadline.

10. The bill sponsor notice requirements of 2-4-302, MCA, do not apply.

BOARD OF OPTOMETRY
LARRY OBIE, PRESIDENT

By: /s/ WENDY J. KEATING
Wendy J. Keating, Commissioner
DEPARTMENT OF LABOR & INDUSTRY

By: /s/ KEVIN BRAUN
Kevin Braun,
Rule Reviewer

Certified to the Secretary of State, March 18, 2002.